Supreme Court, U. S.
FILED
FEB 24 1909
JAMES H. MCKENNEY,
Clerk.

THE UNITED STATES OF AMERICA.

In the Supreme Court of the United States.

Writ of Error to the Supreme Court of the State of South Carolina.

JOHN BROWNFIELD, *Plaintiff in Error,*

against

THE STATE OF SOUTH CAROLINA, *Defendant in Error.*

ANSWER OF DEFENDANT IN ERROR.

John S. Wilson, Solicitor, Attorney for Defendant in Error.

THE UNITED STATES OF AMERICA.

In the Supreme Court of the United States.

Writ of Error to the Supreme Court of the State of South Carolina.

JOHN BROWNFIELD, *Plaintiff in Error*,

against

THE STATE OF SOUTH CAROLINA, *Defendant in Error*.

The defendant in error herein in answer to the petition for writ of error and the assignments of error therewith, and in obedience to the order requiring it to show cause why the judgment rendered by the Supreme Court of the State of South Carolina against the said plaintiff in error as in said writ of error mentioned, should not be corrected, would respectfully show:

I. That the plaintiff in error did not prove nor otherwise offer to prove the allegations of facts stated in his written motion to quash the indictment, and that his written motion to do so, although verified by him, was not of itself proof nor offer of proof of such allegations.

II. That the plaintiff in error did not prove nor otherwise offer to prove the allegations of facts stated in his written motion to challenge the array of grand and petit jurors, and that his written motion to do so, although verified by him, was not of itself proof nor offer of proof of such allegations.

III. That the two exceptions of the plaintiff in error

upon which his appeal from the Circuit to the Supreme Court of the State was based and set out in assignments of error, do not allege that any such proof was made or offered on either of said motions and that the trial Judge refused the same, but simply assert in general terms that the motions were made on the ground "that there was no member of the race to which the defendant belongs either on the grand jury, which found the bill of indictment, or on the petit jury, which rendered the verdict," and that the Judge refused the same on that ground.

JOHN S. WILSON, Solicitor,
Attorney for the State of South Carolina,
Defendant in Error.

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Office Supreme Court U. S.
FILED
FEB 24 1903
JAMES H. McKENNEY, Clerk

THE UNITED STATES OF AMERICA.

In the Supreme Court of the United States.

Writ of Error to the Supreme Court of the State of South Carolina.

JOHN BROWNFIELD, *Plaintiff in Error*,

against

THE STATE OF SOUTH CAROLINA, *Defendant in Error*.

Argument of John S. Wilson, Solicitor, Attorney for Defendant in Error.

THE UNITED STATES OF AMERICA.

In the Supreme Court of the United States.

Writ of Error to the Supreme Court of the State of South Carolina.

JOHN BROWNFIELD, *Plaintiff in Error,*

against

THE STATE OF SOUTH CAROLINA, *Defendant in Error.*

Argument of John S. Wilson, Solicitor, Attorney for Defendant in Error.

I.

STATEMENT.

As it already appears to this Honorable Court there are only two Federal questions presented by the Plaintiff in error in this case, viz: First, Whether the Supreme Court of the State of South Carolina erred in sustaining the Circuit Judge who tried the case in refusing the motion made by the Defendant to quash the indictment on the alleged ground that "the Jury Commissioners appointed to select the grand jury, which found and presented said indictment, selected no person or persons of color or of African descent, known as negroes, because of their race and

color, and that said grand jury was composed exclusively of persons of the white race, while all persons of the colored race or persons of African descent, known as negroes, although consisting of and constituting about four-fifths of the population and of the registered voters in said city and County of Georgetown, and although otherwise qualified to serve as such grand jurors, were excluded therefrom on account of their race and color, and have been so excluded from serving on any jury in said Court of General Sessions for Georgetown County for a considerable time back, which is a discrimination against the Defendant, since he is a person of color and of African descent, known as a negro; and that such discrimination is a denial to him of the equal protection of the laws, and of his civil rights guaranteed by the Constitution and laws of the United States."

Second, Whether the Supreme Court of South Carolina erred in affirming the refusal of the trial Judge to sustain the challenge made by the defendant to the array of the grand and petit jurors upon the same grounds as alleged in the motion to quash the indictment.

The defendant did submit his said grounds of motion to quash the indictment and of challenge to the array in writing, did say therein that he was ready to verify the same, and did subscribe thereto under oath; but he did not prove the allegations of fact made in such motion and challenge, nor did he offer to make any such proof. The Solicitor did not admit the facts alleged in the motion, nor was there any order of the Court allowing such written motion to be considered as proof. The trial Judge ruled upon the motion and challenge just as they were submitted to him without any proof or offer of proof whatever of such allegations. In fact, the Supreme Court of South Carolina asserts: "Furthermore, it was not contended by the appellant's attorney upon the hearing herein that there was any offer to introduce testimony to support the allegations in the motion to quash further than the mere offer alleged in said motion," referring to the written motion submitted.

The defendant, upon the trial Judge's refusal of such

motion and challenge, still had left to him the right under the practice in the State of South Carolina to move upon his conviction, for arrest of judgment, upon said grounds and proper proof thereof, but he never made any such motion.

II.

PROPOSITIONS OF LAW.

1. As to the first question, to wit.: the motion to quash the indictment, it is to be borne in mind that the defendant did not make proof nor did he offer to make proof of the facts alleged as the grounds thereof, and that the Supreme Court of South Carolina so finds and determines.

This being true, it must follow as law that said Supreme Court was right in affirming the refusal of the trial Judge to grant such motion. The authorities are uniform in holding that on such motion such proof or formal offer of proof of the facts upon which it is based must be made to the Court, and that such motion will not be entertained without it.

The case of Carter v. Texas, 177 U. S., 442, recognizes this doctrine, and only allowed the plaintiff in error therein a reversal of the judgment of the State Court, because after submitting in writing his motion to quash the indictment (as in this case) * * * "asked leave of the Court to introduce witnesses, and offered to introduce witnesses to prove and sustain the allegations therein made," which fact essentially differentiates that case from this case.

It will not do to say that the facts that the defendant stated in his written motion, to wit: "all of which the defendant is ready to verify," and that he did in writing swear thereto, constitute any proof, or offers of proof, of the facts alleged as grounds of the motion.

In the case of Smith v. Mississippi, 162 U. S., 601, it is said: "The facts stated in the written motion to quash, although that motion was verified by the affidavit of the accused, could not be used as evidence to establish those facts, except with the consent of the State prosecutor, or

by order of the trial Court. No such consent was given. No such order was made. The grounds assigned for quashing the indictment should have been sustained by distinct evidence introduced or offered to be introduced by the accused. He could not, of right, insist that the facts stated in the motion to quash should be taken as true simply because his motion was verified by his affidavit. The motion to quash was, therefore, unsupported by any competent evidence; consequently it cannot be held to have been erroneously denied."

So, here in this case, there being no admission by the Solicitor of the facts alleged in the motion, nor any order of the Court allowing such written motion to be considered as proof, the trial Judge did not err in refusing the same, nor the Supreme Court of South Carolina in sustaining his refusal. These views on the part of the defendant in error are emphasized by the fact that the general rule of law is, that the defendant cannot, as a matter of right, demand the quashing of an indictment against him, though it may be proper to ask it; but that the same is submitted to the judicial discretion of the trial Judge. He may, without abuse of discretion, remit the defendant to his remedy by challenge to the array of the jury, or to a motion in arrest of judgment. (1 Bish. Crim. Proc., Sections 446–452.) Such is the doctrine decided in the State of South Carolina. The State v. Shirer, 20 S. C., 392.

2. As to the second question, in regard to the challenge to the array of a jury, it need only be said that it requires the same proof to sustain such challenge as to sustain the motion to quash; and as there was no such proof made or offered to be made to sustain the alleged grounds therefor the trial Judge properly refused the same, as shown by what already has been said in regard to the motion to quash the indictment.

So it must be considered that the Supreme Court of South Carolina did not err in its decision upon said questions here brought in review.